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STAFF REPORT AND RECOMMENDATION**ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-084-99
Staff:	LJS-SF
File Date:	8/6/99
45th Day:	9/20/99
60th Day:	10/5/99
Commission Meeting:	9/14/99

FEDERAL AGENCY:**CORPS OF ENGINEERS****DEVELOPMENT****LOCATION:**

Southern boundary of the Sunrise residential complex, between Hollister Street and International Road, north of the Tijuana River, City of San Diego (Exhibits 1 and 2).

DEVELOPMENT**DESCRIPTION:**

Construction of a 2,800-foot-long, six-foot-high compacted-fill flood control berm along the southern boundary of existing residential development and north of the Tijuana River.

SUBSTANTIVE FILE DOCUMENTS:

1. Certified Tijuana River Valley Land Use Plan and City of San Diego LCP (as amended through February 1999).
 2. CD-138-96 (U.S. International Boundary and Water Commission, Tijuana River Valley).
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EXECUTIVE SUMMARY

The Corps of Engineers has submitted a consistency determination for construction of a flood control berm along the northern edge of the Tijuana River Valley in the City of San Diego. The Corps proposes to construct an earthen berm, approximately 2,800 feet long, thirty feet wide, and six feet high, along the southern boundary of the Sunrise residential complex between Hollister Street and International Road, north of the Tijuana River. The berm would be placed against an existing four-foot-high embankment that slopes down from the residential complex to an inactive, 64-acre agricultural field. The berm would occupy approximately two acres of prime agricultural soil and would include approximately 12,000 cubic yards of imported and compacted fill, a one-foot-thick layer of stone rip-rap on the south-facing slope, and a four-inch-thick concrete apron on the crest and north-facing slope.

The need for the project arises from flooding in the Tijuana River floodplain that occurred during the winter of 1993 and that inundated 30 homes in the Sunrise residential complex. This was a 25-year flood event and hydraulic analysis indicates that in spite of recent flood control improvements in the floodplain, the Sunrise complex remains subject to a 100-year flood event on the Tijuana River. Alternatives to the berm were examined that used a reduced amount of agricultural land; however, the Corps deemed infeasible these alternatives due to economic and environmental factors. An alternative that the Corps did not consider in its environmental assessment or consistency determination is the construction of a floodwall in lieu of the berm. A floodwall would avoid impacts to agricultural resources, whereas the proposed earthen berm would affect agricultural land to achieve the necessary flood control objectives. Therefore, the proposed flood control berm is not consistent with the agricultural protection policies of the California Coastal Management Program (CCMP; Section 30241 of the Coastal Act).

The proposed project is located on existing disturbed uplands devoid of any native habitat and will not generate any significant, adverse effects on environmentally sensitive habitat or on threatened and endangered species which use such habitat. Fill for the proposed berm would come from a site adjacent to the riparian corridor along the Tijuana River. Fill removal at the site will not occur during the March 15-August 1 breeding season of the federally endangered least Bell's vireo. Therefore, the Commission finds that the proposed flood control berm is consistent with the environmentally sensitive habitat policy of the CCMP (Section 30240 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description.

The Corps of Engineers proposes to construct an earthen berm, approximately 2,800 feet long, thirty feet wide, and six feet high, along the southern boundary of the Sunrise residential complex between Hollister Street and International Road, north of the Tijuana River (Exhibits 1 and 2). The eastern end of the berm would tie into existing high ground, and the western end of the berm would turn south for 300 feet along Hollister Street until it too meets existing high

ground (Exhibit 3). The berm would be placed against an existing four-foot-high embankment that slopes down from the residential complex to an inactive agricultural field, and would include a three-foot-deep toe along the south-facing base to protect against erosion of the berm. The berm will include approximately 12,000 cubic yards of imported and compacted fill, a one-foot-thick layer of stone rip-rap on the south-facing slope, and a four-inch-thick concrete apron on the crest and north-facing slope (Exhibit 4). A one-quarter acre staging area would be located near the eastern end of the berm, while access for construction equipment (dumptruck, bulldozer, and backhoe) would be taken from the west at Hollister Street. The berm would be constructed in an east to west direction and is scheduled to occur between August and December of the year 2000.

The proposed berm and staging area would be located on private property, and the site where the fill material would be obtained ("Brown's Fill Site") is a privately-owned parcel on the west side of Hollister Road south of the Tijuana River (Exhibit 2). The local sponsor of the proposed berm, the City of San Diego, will be responsible for obtaining all land easements, right-of-ways, and permits for all components of the project. The City will also be responsible for repair and maintenance of the berm, including, but not limited to, removal of armor rock that may be transported from the berm into the agricultural field during flood events.

The need for the project arises from flooding in the Tijuana River floodplain that occurred during the winter of 1993 that inundated 30 homes in the Sunrise residential complex. The Draft Environmental Assessment for the proposed project states that:

Flooding in the subdivision was attributed, in part, to a dike, built by a local farmer, west of International Road. Flows from the Tijuana River entered the subdivision through a washed-out portion of the dike at International Road. The City of San Diego has since removed the dike and filled the portion of International Road that provided a point-of-entry for storm flows.

Stormwater flows from this event also eroded a large portion of Hollister Street. The City of San Diego has since built a new bridge spanning the eroded portion of Hollister Street. This bridge will help reduce flooding on the Tijuana River upstream of Hollister Street.

Based on hydrologic data from the 1993 [flood], it was concluded that this was a 25-year flood event, with a recurrence probability of approximately 4 percent in any given year. Hydraulic analysis also indicate that in spite of the new bridge at Hollister Street and improvements to International Road, the Sunrise Development is still subject to flooding from a 100-year flood event on the Tijuana River. This can primarily be attributed to topographic and geomorphic changes initiated by the 1993 flood event (USACOE, 1999).

The Corps examined several alternatives to the proposed berm. The Corps determined that raising 200 of the existing homes above potential flood stage or purchasing and removing the homes would be prohibitively expensive (\$10 to \$50 million, respectively, compared with the proposed project cost of \$482,000). A flood control project on the main stem of the Tijuana River would generate significant, adverse effects on environmentally sensitive habitat and other coastal resources in the Tijuana River valley.

II. Status of Local Coastal Program

The standard of review for federal consistency determinations is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If the Commission certified the LCP and incorporated it into the CCMP, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The City of San Diego LCP (including the Tijuana River Valley Segment) has been certified by the Commission and incorporated into the CCMP.

III. Federal Agency's Consistency Determination

The Corps of Engineers has determined the project to be consistent to the maximum extent practicable with the California Coastal Management Program.

IV. Staff Recommendation

The staff recommends that the Commission adopt the following motion:

MOTION. I move that the Commission concur with the Corps of Engineers' consistency determination.

The staff recommends a **NO** vote on this motion. Failure to receive a majority vote in the affirmative will result in adoption of the following resolution:

Objection

The Commission hereby **objects** to the consistency determination made by the Corps of Engineers for the proposed flood control berm, finding that the project is not consistent to the maximum extent practicable with the California Coastal Management Program.

V. Consistent to the Maximum Extent Practicable:

Section 930.32 of the federal consistency regulations provide that:

The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.

The Commission recognizes that the standard for approval of Federal projects is that the activity must be “consistent to the maximum extent practicable” (Coastal Zone Management Act Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is “*prohibited [by] existing Federal law applicable to the Federal agency's operations*” (15 C.F.R. § 930.32). The Corps has not demonstrated that this project is consistent to the maximum extent practicable with the CCMP by citing and “statutory provision, legislative history, or other legal authority which limits [their] ... discretion to comply with the provisions of the” CCMP (15 C.F.R. § 930.32(a)). Therefore, there is no basis for the Commission to conclude that although the proposed project is inconsistent with the CCMP, it is consistent to maximum extent practicable.

VI. Alternative Measures.

Section 930.42(a) of the federal consistency regulations (15 CFR § 930.42(a)) requires that, if the Commission’s objection is based on a finding that the proposed activity is inconsistent with the CCMP, the Commission must identify measures, if they exist, that would bring the project into conformance with the CCMP. That section states that:

In the event the State agency disagrees with the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the disagreement and supporting information. The State agency response must describe (1) how the proposed activity will be inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the management program.

As described in Agriculture Section below, the proposed project is inconsistent with the CCMP. Pursuant to the requirements of Section 930.42 of the federal regulations implementing the CZMA, the Commission is responsible to identify measures, if they exist, that would bring the project into compliance with the CCMP. The Commission believes that it may be possible to bring this project into compliance with the CCMP if the Corps implements the following measure:

1. Design a floodwall to provide protection to the adjacent subdivision.

VII. Federal Agency Responsibility:

Section C(a)(i) of Chapter 11 of the CCMP requires federal agencies to inform the Commission of their response to a Commission objection. This section provides that:

If the Coastal Commission finds that the Federal activity or development project ... is not consistent with the management program, and the federal agency disagrees and decides to go forward with the action, it will be expected to (a) advise the Coastal Commission in writing that the action is consistent, to the

maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination, it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

VIII. Findings and Declarations.

The Commission finds and declares as follows:

A. Agriculture. Section 30241 of the Coastal Act provides:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

The proposed berm would be constructed along an existing, south-facing, four-foot-high earthen embankment that separates a currently inactive agricultural field and the Sunrise residential development. The 2,800-foot-long, 30-foot-wide (at the base) earthen berm would be constructed primarily along the northern perimeter of the field; however, at the northwest corner

the berm would turn south for approximately 300 feet until intersecting existing high ground along Hollister Street (Exhibit 3). The berm would have a total footprint of two acres and be situated on prime agricultural soil. The presence of the berm would reduce the amount of acreage available for future agricultural operations on the 64-acre field by three percent (two acres).

While the subject agricultural field has not been cultivated for at least five years (and possibly longer), the field appears to be viable from a production standpoint (sod/turfgrass production is currently the predominant agricultural operation in the Tijuana River Valley). The Commission staff spoke with a representative with the federal Natural Resources Conservation Service (formerly the Soil Conservation Service) who confirmed that the location of this field, given its distance from the Pacific Ocean and the Tijuana River and from the salinity and drainage problems associated with those two water bodies, would seem to indicate that the field could still support agricultural operations, at least from a soils perspective (the economic viability of any future agricultural undertaking is unknown at this time). As a result, the current proposal to use a portion of this field (albeit a narrow strip along the northern edge) for a flood control berm must be examined for consistency with the agricultural protection policies of Section 30241 of the Coastal Act.

Unlike previous projects (both in the Tijuana River Valley and other areas of the state) that the Commission found conflicted with Section 30241 because they would result in the conversion of agricultural lands to urban, natural habitat, or other uses, the current proposal by the Corps does not completely eliminate agricultural operations on the subject parcel. Rather, it reduces by a small amount (3%) the land area presently available for agricultural production at the site, in order to provide 100-year flood protection to an existing residential development that has a history of inundation by flood flows from the Tijuana River.

The Corps examined alternatives to the berm that would not use agricultural lands or a reduced amount of land and determined that these alternatives are infeasible due to economic or environmental factors, or both. However, the Corps did not examine the construction of a floodwall instead of the proposed berm. The proposed berm requires a 2:1 slope and to achieve the necessary flood protection. It is this slope that results in a loss of prime agricultural soils. On the other hand, a floodwall would be vertical and could be constructed without a loss of prime agricultural soils. Therefore, the proposed berm is inconsistent with Section 30241's requirement to maintain the maximum amount of prime agricultural land. Additionally, the proposed project, which provides protection for an urban land use, is an inconsistent conversion of prime agricultural land. Section 30241(d) requires the development of lands not suited for agriculture prior to conversion of agricultural land. Since the vertical wall could be constructed entirely on non-agricultural lands, the proposed berm would convert agricultural land unnecessarily. Therefore, the proposed project does not meet the requirement of using non-agricultural land prior to converting agricultural land.

In conclusion, the Commission finds that the proposed flood control berm has not been designed to minimize agricultural impacts and is, therefore, inconsistent with the agricultural protection

policies of the California Coastal Management Program (CCMP; Section 30241 of the Coastal Act).

B. Environmentally Sensitive Habitat. Section 30240 of the Coastal Act provides:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

As noted in the previous section of this report, the proposed berm will be situated on approximately two acres of prime agricultural soil (part of a larger 64-acre agricultural field currently fallow) and immediately adjacent to an existing residential development. The Draft Environmental Assessment for the project addresses biological resources as follows:

The Sunrise Berm alignment was surveyed on July 6, 1999. No significant vegetative resources exist within the berm alignment and construction easement. The berm and construction alignment consist primarily of an existing dirt road and slope up to homes, and a bare agricultural field. Scattered vegetation along the slope consists of ruderal plant species including giant reed (Arundo donax), chrysanthemum (Chrysanthemum sp.), and sunflower (Helianthus sp.) and various ornamentals along the back fences of the residences. The agricultural field was fairly devoid of vegetation and appeared recently disked . . . The berm area is located on the far northern end of the Tijuana River floodplain, within the Tijuana River Valley. The Tijuana River Valley includes an extensive, significant riparian community supporting a diverse array of vegetative resources; this riparian corridor is approximately 1650 feet south of the proposed berm area.

The borrow site for the berm is located at the Brown's fill site, directly west of Hollister Street adjacent to the Tijuana River [Exhibit 2]. The site is a disturbed residential/agricultural site which does not contain any native vegetation communities. However, the borrow site is located directly adjacent to the Tijuana River and thus is adjacent to the vegetatively diverse Tijuana River riparian corridor.

. . .

The disked agricultural field adjacent to the proposed berm site provides little habitat for wildlife due to the disturbed nature of the site and the lack of vegetative cover. Wildlife use of the Brown's fill borrow site is minimal as no native habitats are present on the site.

The Corps concluded that due to the lack of suitable habitat within the proposed berm alignment, construction right-of-way, and Brown's fill borrow site, no direct or indirect impacts to native vegetation will occur with construction of the proposed berm. The Brown's fill borrow site will be watered when fill is removed so that dust generation is minimized and impacts on adjacent riparian vegetation are likewise minimized. In addition, no direct or indirect impacts on threatened or endangered species will occur with construction of the berm. However, fill removal at the Brown's fill borrow site could result in indirect effects to the federally endangered least Bell's vireo. The vireo is present in the Tijuana River riparian corridor directly adjacent to the proposed Brown's fill borrow site and as such, could be indirectly affected by fill removal operations, particularly construction noise. However, the Corps will prohibit use of the borrow site during the March 15-August 1 vireo breeding season, and indirect project impacts to the vireo will be avoided.

In conclusion, the proposed project is located on existing disturbed uplands devoid of any native habitat and will not generate any significant, adverse effects on environmentally sensitive habitat or on threatened and endangered species which use such habitat. Therefore, the Commission finds that the proposed flood control berm is consistent with the environmentally sensitive habitat policy of the CCMP (Section 30240 of the Coastal Act).